

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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In re:

W. ROBERT WARDELL, JR., and
DON MITCHELL WILBORN,

Plaintiffs,

Northern District of Ohio

v.

C/A No.: 3:18-cv-01075-JJH

RENEA ROYSTER, et al.

Defendant.

MOTION FOR AN ORDER DIRECTING BOP TO PRESERVE EVIDENCE IN
FOREIGN PROCEEDINGS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW W. Robert Wardell, Jr., and Don Mitchell Wilborn, appearing pro se, and respectfully moves this honorable Court for an order directing the BOP to preserve evidence in Wardell/Wilborn v. Royster, No. 3:18-cv-01075-JJH (N.D. Ohio) and Wardell/Wilborn v. Royster, No. 2017-CV-H 233 (Ottawa County Court of Common Pleas). As grounds in support, Messrs. Wardell and Wilborn state:

Messrs. Wardell and Wilborn are Plaintiffs in the above cited cases. Currently, neither court has jurisdiction over this matter as the case has been improperly removed by the Ohio Defendants to an Ohio court, contrary to 28 U.S.C. §

1441(b)(2). A motion to remand remains pending in the U.S. District Court for the Northern District of Ohio. The Ottawa County Court of Common Pleas lacks jurisdiction until such time as the federal court remands back.

In the meantime, an issue over which this Court would, arguably, have jurisdiction has arisen.

The Defendant in the above-referenced actions, Renea Royster, aka Renee Bell, aka Renyne Rouster, dba Bridging the Gap, the Plaintiffs have learned, through fellow inmates, has been sending false and disparaging emails--from Ohio to inmate FNU Boyd, housed in BA Unit, at the FCI Estill, South Carolina--in an effort to intimidate and harass the Plaintiffs.

While the exact contents of these emails is not known to Plaintiffs, it is believed that the emails consist of Plaintiffs' criminal docket sheets and allegations of cooperation with the government, as well as other disparaging commentary relevant to the pending civil proceedings underway in Ohio.

The BOP does not permanently maintain these emails and, after a short period of time, tapes over them or recycles them in some way--making any data irretrievable.

The Plaintiffs will seek to obtain the emails via a foreign subpoena duces tecum from this Court, pursuant to Fed. R. Civ. P. 45(c)(2)(A).

Accordingly, Messrs. Wardell and Wilborn pray for an

order from this Court directing the FCI Estill (BOP), South Carolina, to properly preserve all emails to/from Renea Royster, aka Renee Bell, aka Renyne Rouster, dba Bridging the Gap and to/from FNU Boyd in Unit BA of the FCI Estill, related to Messrs. Wardell and/or Wilborn, until such time as a foreign subpoena can be obtained or an Ohio court can issue proper directives related to this evidence. In the alternative, this Court should order the emails submitted "in camera" for the Court to forward to the appropriate authorities after reviewing the contents for itself.

Respectfully submitted this 10th day of July, 2018.



W. Robert Wardell, Jr.

Reg. No. 32096-013



Don Mitchell Wilborn

Reg. No. 29431-001

P.O. Box 699

Estill, SC 29918-0699

(303) 237-7509 (M)

cimarronfarms@gmail.com

CERTIFICATE OF SERVICE

We hereby certify that on this 10th day of July, 2018, we

served the PLAINTIFFS' SUBMISSION RE: APPEARANCE BY VIDEO
TELECONFERENCING by delivering____ mailing_**_ faxing____ same
to all counsel/parties of record, as required by law:

Clerk

U.S. District Court

901 Richland St.

Columbia, SC 29201

Renea Royster

P.O. Box 76

Martin, OH 43445

DECLARATION UNDER PENALTY OF PERJURY

We declare (certify, verify, or state), under penalty of
perjury, that the information in the foregoing Certificate of
Service is true and correct. See 28 U.S.C. § 1746; 18 U.S.C.
§ 1621.

Executed on 10 July, 2018, at Estill, South Carolina.



W. Robert Wardell, Jr.



Don Mitchell Wilborn

**Said pleading, if mailed, was deposited with prison
officials for mailing in the prison's legal mail system, de-

signated as "Legal Mail" and/or "Special Mail," on or before the last day for filing, pursuant to the "Mailbox Rule," and is deemed "filed" as of that date. *Houston v. Lack*, 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988); *Richards v. Thaler*, 710 F.3d 573, 576 (5th Cir. 2013) (holding that the "mailbox rule" deems a pro se prisoner's pleading filed on the date it is delivered to prison officials for mailing); *United States v. McNeill*, 523 Fed. App'x 979 (4th Cir. 2013) ("pro se litigant's papers are considered filed upon 'delivery to prison authorities, not receipt by the clerk.'"); *United States v. Ceballos-Martinez*, 358 F.3d 732 (10th Cir. 2004), revised and superseded, 371 F.3d 713 (10th Cir. 2004), reh'g denied en banc, 387 F.3d 1140 (10th Cir. 2004), cert. denied, 125 S.Ct. 624 (Dec. 29, 2004); *Jeffries v. United States*, 748 F.3d 1310, 1314 (11th Cir. 2014) ("Under the prison mailbox rule, a pro se prisoner's court filing is deemed filed on the date it is delivered to prison authorities for mailing"); *Williams v. McNeil*, 557 F.3d 1287, 1290 n.2 (11th Cir. 2009); *Washington v. United States*, 243 F.3d 1299, 1301 (11th Cir. 2001) ("Absent contrary evidence, we will assume that a prisoner's filing 'was delivered to prison authorities the day he signed it.'"); *Adams v. United States*, 173 F.3d 1339, 1341 (11th Cir. 1999) ("a prisoner's motion is deemed filed on the date it is delivered to prison officials for mailing"); C.A.R. 25(b); C.R.Civ.P. 5(e); C.R.Crim.P. 45(f); Fed.R.Civ.P. 5; Fed.R.App.P. 4(c); S.Ct.R. 29.2; R. Governing §§ 2254 and

2255 Cases, codified at U.S. Dist. Cts. 3(d). First-class postage was prepaid and the envelope was properly addressed to counsel of record and the Court as indicated above. Where applicable, the pleading was submitted to the Clerk of Court for filing in the CM/ECF system or electronic filing system. Notice of Electronic Filing will be sent by the Clerk of Court to all registered CM/ECF or electronic filing participants.